Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TERM, 1980

NO. 79-1318

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

vs.

ARNOLD T. HENDERSON,
Respondent

PETITION FOR A WRIT OF CETIORARI TO
THE SUPERIOR COURT OF PENNSYLVANIA

James R. Freeman
District Attorney
Chester County

S. Lee Ruslander II
Chief of Appeals
Chester County Courthouse
West Chester, PA. 19380

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OPINION BELOW

The opinion of the Superior Court of Pennsylvania is reported at Pa. Super., 405 A.2d 940 (1979). This opinion appears in the Appendix hereto (pp. 1a - 8a). The unreported order of the Pennsylvania Supreme Court denying leave to appeal appears in the Appendix hereto (pp. 9a). The unreported opinion of the Court of Common Pleas of Chester County appears in the Appendix hereto (pp. 10a - 25a).

JURISDICTION

The decision of the Supreme Court of Pennsylvania denying leave to appeal was entered on November 29, 1979. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether the 5th and 6th Amendments of the United States Constitution establish a per se rule of exclusion that unless a juvenile consults with an

informed and interested adult prior to waiving his Constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966), no statement obtained from that juvenile will be admissible in evidence in his state prosecution for murder, notwithstanding that the juvenile, almost 16 years old, was fully advised of his Miranda rights before waiving these rights and making the statements.

CONSTITUTIONAL PROVISIONS INVOLVED

FEDERAL

FIFTH AMENDMENT

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law nor shall private property be taken for public use, without just compensation."

SIXTH AMENDMENT

The Sixth Amendment to the United States Constitution provides:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

PENNSYLVANIA CONSTITUTION

ARTICLE 1, SECTION 9

§9. Rights of accused in criminal prosecutions.

> "In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property,

> unless by the judgment of his peers or the law of the land."

STATEMENT OF THE CASE

Prior Proceedings

On January 16, 1976, after a jury trial, Arnold T. Henderson was found guilty of murder in the first degree, robbery, burglary, theft by receiving stolen property, criminal conspiracy and unlawful use of a motor vehicle. He was found not guilty of murder in the second degree, murder in the third degree, voluntary manslaughter and involuntary manslaughter. Prior to trial the defendant filed a motion to suppress his statement as well as an amended motion to suppress wherein be alleged that the statement was taken in violation of his federal and state constitutional rights. At the conclusion of the hearing on the motion to suppress, the trial judge concluded that the defendant's statement was

admissible, having been knowingly, willingly, and intelligently given. (Notes of Testimony hereinafter N.T. p. 164).

On appeal, the Superior Court of Pennsylvania reversed and set aside the trial judge's ruling on the admissibility of the statement. Com. v. Henderson (App. 1a - 8a). The Commonwealth then sought review of the Superior Court decision and filed a Petition for Allowance of Appeal. In this Petition the Commonwealth alleged, inter alia, that the Superior Court erred in holding that Com. v. Smith, 472 Pa. 492, 372 A.2d 797 (1977) controlled. The Commonwealth contended in its Petition for Allowance of Appeal that the proper test for determining whether the defendant made a knowing, voluntary and intelligent waiver of his Miranda rights was a consideration of the totality of the circumstances and not the

"three prerequisites" test announced in the Smith case. Com. v. Smith, supra at 803.

On November 29, 1979, the Supreme Court of Pennsylvania denied the Commonwealth's Petition for Allowance of Appeal and remanded the record to the trial Court on January 2, 1980.

STATEMENT OF FACTS

On September 3, 1975, at approximately 12:20 A.M., members of the Pennsylvania State Police were dispatched to the Chester County hospital to investigate an automobile accident. (N.T. 71). The defendant was taken into custody at the hospital when one of the troopers overheard him making a statement that he had been driving the car at the time of the accident. (N.T. 72). Although he was advised of his Miranda rights at the hospital, no questioning occurred there. (N.T. 77, 149-152).

The State Police then contacted the defendant's parents to advise them that their son was in custody. After the defendant's step-father advised the police that he was not coming down to the station to consult with the defendant, the State Police went to the residence of the defendant's step-father and mother. (N.T. 75). Both the mother and step-father were informed of the defendant's Constitutional rights and both signed a form acknowledging their understanding of these rights. (N.T. 74-76). Both indicated that as far as they were concerned the defendant could make a statement if he desired. (N.T. 35-36, 87-88).

At 5:30 A.M. the defendant was advised by the police that his parents had been contacted by the police and had given the police permission to interview him. (N.T. 38). He was advised of his Miranda warnings and acknowledged that he

understood them. (N.T. 30). The defendant then made an oral incriminating statement. (N.T. 30). The defendant thereafter agreed to give a written statement. (N.T. 33). Again he was advised of his Miranda warnings. (N.T. 33-34). In addition the defendant was asked if he would give a statement without his parents being present. (N.T. 119). He indicated that he would give a statement because his parents didn't like him. (N.T. 119). Before making the statement the defendant did not request the presence of anyone. (N.T. 120). At the conclusion of the written statement, which was a question and answer type-written statement that was typed by the police as the questions were asked and answered, the defendant signed each page of the statement after reading it. (N.T. 43). After the statement was completed the defendant was taken before a Magistrate where he

was formally arrested and arraigned. (N.T.139). The typewritten statement was read into evidence at trial over the defendant's objection. (N.T. 367-378).

The defendant was sentenced to life imprisonment on the murder conviction and concurrent terms of 5 to 10 years on the various other charges. The Superior Court concluded that the defendant did not knowingly, intelligently and voluntarily waive his Miranda rights. The three judges of the Superior Court who heard the appeal determined that the case was controlled by Com. v. Smith, supra. The Superior Court's opinion indicated that a waiver of Miranda rights be a juvenile cannot be effective absent consultation with an interested adult. This decision was grounded solely upon the Pennsylvania Supreme Court's decision in Smith, supra., which decision was grounded solely upon the Federal consti-

tution as interpreted by various federal and state decisions.

REASONS FOR GRANTING THE WRIT

INTRODUCTION

The petitioner argues the following reasons why this petition for writ of certiorari should be granted:

1. The decision rests solely upon the Constitution of the United States.

2. The decision of the Pennsylvania Superior Court represents an unwarranted and erroneous expansion of the exclusionary rule enunciated in Miranda v. Arizona, 354 U.S. 436 (1966), which conflicts with the spirit of In Re Gault, 387 U.S. 527 (1967) and Gallegos v. Colorado, 370 U.S. 49 (1962); Fare v. Michael C, ___U.S. ___(1979).

I. THE DECISION RESTS SOLELY UPON THE CONSTITUTION OF THE UNITED STATES.

Although Pennsylvania has a constitutional provision against compulsory

self-incrimination in any criminal prosecution, Pennsylvania Constitution, Art. 1, Section 9, the present case was decided by the Pennsylvania Courts on Fifth and Sixth Amendment grounds. The decision did not rest on the Pennsylvania Constitution as it was not once mentioned in the opinion.

Specifically the Superior Court quoted from the Pennsylvania Supreme Court decision in Com. v. Smith, 472 Pa. 492, 372 A.2d 797 (1977). Two pertinent parts of the language quoted are these:

> (1) "'In Roane, [Com. v. Roane, 459 Pa. 389, 329 A.2d 286] we first articulated the concept that an attempted waiver of the Fifth and Sixth Amendment rights during custodial interrogation will not be considered as being effective absent a showing that the minor 'had access to the advice of a parent, attorney or other adult who was primarily interested in his welfare' ..." Henderson, supra at 941. (emphasis added).
>
> (2) "'Lastly, this alleged waiver

> is also ineffective because the minor was not in fact provided an opportunity for consultation. The Commonwealth's position erroneously focuses upon the opportunity afforded the adult. They assumed that the parent's disinterest can be translated into a waiver by a minor. This assumption completely misconstrues both the Fifth and Sixth Amendment privileges and the objectives sought to be achieved by our case law...'". Henderson, supra at 942. (emphasis added).

An examination of Com. v. Roane, 459 Pa. 389, 329 A.2d 286 (1974) indicates that it is grounded on two United States Supreme Court decisions, In Re Gault, 387 U.S. 1 (1967), and Gallegos v. Colorado, 370 U.S. 49 (1962). Thus, there is no need to remand this case to the Superior Court of Pennsylvania for clarification of its opinion. Ohio v. Gallagher, 425 U.S. 257 (1976).

II. THE COURT BELOW IMPROPERLY EXPANDED AND EXTENDED THE REQUIREMENTS OF MIRANDA V. ARIZONA, 384 U.S. 436 (1966), TO

SITUATIONS WHERE A JUVENILE'S WAIVER OF HIS MIRANDA RIGHTS IS PER SE INEFFECTIVE UNLESS HE FIRST CONSULTS WITH AN INFORMED AND INTERESTED ADULT.

The United States Supreme Court recently reaffirmed the principle that the totality of the circumstances approach is adequate to determine whether there has been an effective waiver of Miranda rights by a juvenile:

> "We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights as opposed to whether an adult has done so. The totality approach permits - indeed, it mandates - inquiry into all of the circumstances surrounding the interrogation." Fare v. Michael C, 61 L. Ed. 2d 197, 212, ____ U.S. ____, 99 S. Ct. ____.

The holding in Fare is merely an extension of Gallegos v. Colorado, 370 U.S. 49, 8 L. ed 2d 325, 329, 82 S. Ct. 1209 (1962) where this court recognized that in situations involving juvenile state-

ments, the totality of circumstances must be examined.

Because the United States Supreme Court has not heretofore extended the per se aspects of the Miranda safeguards beyond the scope of the holding in the Miranda case, the Pennsylvania appellate courts may not impose greater restrictions as a matter of federal constitutional law than the United States Supreme Court has imposed. Fare v. Michael C., supra.; Oregon v. Huss, 420 U.S. 714, 43 L. Ed. 2d 570, 95 S. Ct. 1215 (1975).

It is clear that the Pennsylvania appellate courts have interpreted Miranda and the Fifth and Sixth Amendments in a way not in accord with the totality of circumstances approach utilized by this Court.

Com. v. Smith, 372 A.3d 797 (1977), the case relied upon by the Superior Court in deciding Com. v. Henderson

states as follows on page 803:

> "Under our formulation, failure by the Commonwealth to establish either the adult was one interested in the welfare of the juvenile accused, that the adult was aware of the rights of the accused, or that the minor had an opportunity to consult, would justify the conclusion that the purported waiver was ineffective. In this instance, the Commonwealth did not establish any of the three prerequisites necessary to prove waiver. We are therefore constrained to conclude that the statement should have been suppressed." (emphasis added).

Thus it is apparent that the Pennsylvania appellate courts have established that no statement is admissible unless these three prerequisites are complied with by the Commonwealth prior to the defendant's waiver of his Miranda rights.

This three-prerequisites test as applied by the Superior Court of Pennsylvania in the instant case obviated the necessity of that Court determining if the defendant's waiver was knowingly,

voluntarily and intelligently made under the totality of circumstances surrounding the interrogation.

An examination of the totality of circumstances of the defendant's interrogation clearly establish that the defendant's waiver was knowing, voluntary and intelligent. The defendant was 15 years and 10 months old at the time the statement was given. He had been in custody less than six hours and had not been interrogated prior to making his statement. He admitted in the statement that he had been fairly treated and was freely and voluntarily making the statement. He did not appear to be under the influence of alcohol or drugs. He did not request an attorney although he was fully advised of his Miranda rights three times. Each time he expressly waived these rights. To suppress this statement solely on the grounds that the defendant

did not consult with an interested and informed adult prior to waiving his rights, is to distort and expand Miranda v. Arizona, 384 U.S. 436, to such a degree as to render meaningless the totality of circumstances approach approved by this court.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted:

S. Lee Ruslander II

S. Lee Ruslander II
Chief of Appeals
District Attorney's Office
Chester County Courthouse
West Chester, Pa. 19380

February, 1980

IN THE SUPERIOR COURT
OF PENNSYLVANIA

NO. 22 SPECIAL TRANSFER DOCKET
PHILADELPHIA DISTRICT

COMMONWEALTH OF PENNSYLVANIA
VS.
ARNOLD T. HENDERSON, APPELLANT

Appeal from the Judgment of Sentence of the Court of Common Pleas of Chester County, Criminal Division, Nos. 1494(2) C 1975 and 1494(2A) 1975.

BEFORE: HOFFMAN, EAGEN, and HESS, JJ.*

OPINION PER CURIAM:

Appellant, a juvenile, was found guilty of murder of the first degree by a jury. On this direct appeal, he contends inter alia[1] that the lower court erred in not suppressing his written statement because he did not knowingly, intelligently, and voluntarily waive his

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1. (NOTE: All footnotes will appear at the end of the Appendix.)

*Chief Justice Michael J. Eagen of the Supreme Court of Pennsylvania and Judge Warren K. Hess of the Court of Common Pleas of Berks County, Pennsylvania, are sitting by designation.

Miranda rights. We conclude that this contention is meritorious and, accordingly, reverse and remand for new trial.

Appellant, 15 years old, was arrested on September 3, 1975, and taken to the state police barracks. He arrived there at approximately 2:00 a.m. and gave the statement at approximately 6:00 a.m. Between appellant's arrival and his giving of the statement, police, who knew appellant was a juvenile contacted appellant's parents. The parents refused to go to the barracks.[2] A trooper went to the parents' home where they again refused to go to the barracks where appellant was being held. The trooper explained their son's rights to the parents, and they executed a written waiver. Later, the police advised appellant that his parents were not present and showed him the written waiver. Appellant responded that he had not

requested his parents' presence and, after being warned of his rights, waived his Miranda rights and gave police the statement at issue.

Commonwealth v. Smith, Pa. , 372 A.2d 797 (1977) controls the instant case. In holding there that a juvenile's waiver cannot be effective absent consultation with an interested adult, our Supreme Court specifically stated:

"In Roane, we first articulated the concept that an attempted waiver of the Fifth and Sixth Amendment rights during custodial interrogation will not be considered as being effective absent a showing that the minor 'had access to the advice of a parent, attorney or other adult who was primarily interested in his welfare.' Id., 459 Pa. at 394, 329 A.2d at 288. It was never the intention to exclude the requirement of interest simply because the consulting

adult was a parent of the minor. To the contrary, it was assumed that the relationship would assure the requisite concern for the welfare of the minor. However, that assumption does not justify the creation of an irrebuttable presumption of interest by a parent. Where, as here, the disinterest of the parent is graphically demonstrated, it is clear that [the parent] was not the interested adult envisioned in the rule. If the adult is one who is not concerned with the interest of the minor, the protection sought to be afforded is illusory and the procedure fails to accomplish its purpose of offsetting the disadvantage occasioned by the immaturity.

. . .

"Lastly, this alleged waiver is also ineffective because the minor was not in fact provided an opportunity for consultation. The Commonwealth's position

erroneously focuses upon the opportunity afforded the adult. They assumed that the parent's disinterest can be translated into a waiver by a minor. This assumption completely misconstrues both the Fifth and Sixth Amendment privileges and the objectives sought to be achieved by our case law. These rights are personal to the accused and therefore may only be waived by him, not the adult. Providing an opportunity for consultation with an adult seeks to insure that the juvenile is provided a means by which he can make an informed choice with respect to his rights. Here, the opportunity to confer was denied because of [the parent's] unilateral decision not to participate." (footnotes omitted).

Id. at , 372 A.2d at 801-02.

We conclude from our review of the record that appellant's statement should

have been suppressed on the basis of Smith.

Judgment of sentence reversed[3] and case remanded for new trial.

FOOTNOTES:

1. Appellant also contends that the lower court erred in (1) not granting a dismissal of the bill of indictment when the Commonwealth failed to file requested bill of particulars in a timely fashion, (2) allowing the Commonwealth to file a supplemental bill of particulars, and (3) refusing further voir dire of three jurors to determine whether they were exposed to a prejudicial news broadcast. We conclude that the first two contentions lack merit. Pa.R.Crim.P. 221 (Now repealed) stated that the Commonwealth "should" answer a request for a bill within two days. Although the Commonwealth did not serve its bill until eight days after the request, appellant's trial did not commence until two weeks after such service, thus providing adequite time for the preparation of appellant's defense. Compare Commonwealth v. Albanesi, 234 Pa. Superior Ct. 111, 338 A.2d 610 (1975). Therefore, because the time limit for serving a bill of particulars was not mandatory and because no prejudice was shown, we conclude that the lower court did not abuse its discretion in denying appellant's application to dismiss the indictment. Similarly, we find no abuse of discretion in permitting the Commonwealth to file a

supplemental bill. The supplement merely allowed the Commonwealth to state in one paragraph those felonies already mentioned in the bill with which appellant was being tried on a felony-murder theory. However, appellant's request indicates he knew that the Commonwealth would proceed on felony murder. Because no prejudice resulted, we find no abuse of discretion. Because we are remanding for new trial on the issue of appellant's written statement, we need not and do not reach the merits of appellant's last contention.

2. Specifically, appellant's stepfather stated, "Oh, I don't want nothing to do with that boy. I'm not coming to the barracks."

3. The Commonwealth argues harmless error in admitting the inculpatory statement citing Commonwealth v. Hart, 471 Pa. 271, 370 A.2d 298 (1977), which held harmless error in admitting a statement of an accused if he testifies to the same facts at trial as in the statement. Hart is inapposite in this instant case and thus unpersuasive.

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

December 10, 1979

William H. Lamb, Esq.
District Attorney
Chester County Court House
West Chester, Pa. 19380

RE: Commonwealth v. Arnold T. Henderson
NO. 4402 Allocatur Docket

Dear Mr. Lamb:

This is to advise you that on November 29, 1979, the Supreme Court entered its Order denying the Petition for Allowance of Appeal in the above-captioned matter.

Very truly yours,

/s/ Sally Mrvos

Sally Mrvos
Prothonotary

SM:ejh

cc: Susan J. Gilhooly, Esq.

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

VS.

ARNOLD HENDERSON

CRIMINAL PROCEEDINGS

NOS. 1494 (2) C, 1975

1494 (2A) C, 1975

O P I N I O N

Defendant was found guilty of Murder of the first degree, robbery, burglary, theft, criminal conspiracy and unauthorized use of an automobile. Timely motions for a new trial and in arrest of judgment were filed and after argument are ready to be disposed of.

On or about September 1, 1975 defendant in the company of one Jewel Roberts entered the premises occupied by Ray Lowe, bound him to a bed, committed several criminal offenses, resulting in the death of Ray Lowe by strangulation.

Defendant alleges that the Court erred when it permitted the Commonwealth to amend the bill of indictment with regard to the charge of conspiracy by adding the name of Jewel Roberts as a

co-conspirator and to correct the statutory citations of certain alleged crimes being the objects of the conspiracy. The record reveals the following:

"THE COURT: Let's confine ourselves to the proposed amendments to the bill of indictment.

MR. SHAFFER: Your Honor, I have no objection to the amendments which merely change the citations of the acts which Mr. Houpt has cited in the indictments.

THE COURT: I take it you also have no objection to the delineation of the criminal objectives as being named thefts in the second count?

MR. SHAFFER: I have none.

THE COURT: We will allow that amendment. We will allow both the second and third count with regard to the subsections of the section of the Crimes Code.

MR. HOUPT: That's correct.

THE COURT: And the delineation of the two thefts as the criminal objectives of murder of the second degree. The other two are on the other bill of indictment adding an intended crime and the change in the name of the co-conspirator.

MR. SHAFFER: Yes, Your Honor. I would object to those two amendments and stating for my authority, Your Honor, would be 19 Purdon's Section 433, which basically only allows an amendment to an indictment where the amendment seeks to change a name in the indictment. If you indulge me a second--

THE COURT: Sure.

MR. SHAFFER: Where it seeks to change a name in the indictment which, of course, this amendment seeks to change, but there are also two objectives the Commonwealth would have to show to get

the amendment, those being -- they would be allowed if the Court considers such variance not material to the merits of the case and the defendant cannot be prejudiced thereby in his defense, and I would argue that allowing the amendment that the Commonwealth proposes --

THE COURT: From the record it would appear the defendant has been aware of the fact that Jewel Roberts was the co-conspirator throughout.

MR. SHAFFER: That's correct, Your Honor. I can't deny that, but it is my argument the amendments would go to the merits of the case, because, obviously, if the Commonwealth is seeking to show a conspiracy, the defendant cannot conspire by himself, and it would be my argument the Commonwealth has not correctly written the original bill of indictment and hence, would not be able to change it at this time as to that particular

issue, Your Honor.

THE COURT: Well, we will overrule your objection and allow the amendment of that bill of indictment. Also, in the two matters set forth adding false imprisonment as an intended crime under the second count charging burglary and in the fifth count changing the name of the co-conspirator to Jewel Roberts."

Having agreed in part to the amendment, defendant cannot now complain with regard to it. The defendant did object to the proposed amendment concerning the changing of the obvious mistake as to the name of the co-conspirator.

The fifth count of Bill of Indictment 1494-2-A C, 1975 charged the defendant Arnold Henderson with the offense of criminal conspiracy naming the co-conspirator as the same Arnold Henderson. Over objection, the Court permitted the Commonwealth to amend the bill to name

Jewel Roberts as the co-conspirator.

Pa. R. Crim. P. 220 provides:

> "The Court may allow an indictment to be amended where there is a defect in form, the description of the offense, the description of any person or any property, or the date charged provided the indictment as amended does not charge an additional or different offense. Upon amendment the Court may grant such a postponement of trial or other relief as is necessary in the interest of justice."

It is well settled that a defect of substance in an indictment cannot be amended, however, if the defects are of form it can be amended. In Commonwealth v. Brown, 229 Pa. Superior Ct. 67 (1974) the court allowed an amendment to an indictment permitting the insertion of a co-conspirator's name. The defect in the instant matter likewise is one of form. The test is whether the defendant is notified of the charge he is to meet. The defendant acknowledged that he knew the co-conspirator and in no way was pre-

judiced. We find no merit in defendant's argument.

On December 17, 1975 defendant filed a pleading captioned "Request for Bill of Particulars and Application For Discovery and Inspection" upon which a rule was issued returnable within two days as to the Request for a Bill of Particulars and within two days as to the Request for a Bill of Particulars and within seven days as to the application for Discovery and inspection.

An answer was filed. On January 5, 1976 the Commonwealth filed a supplemental answer to conform certain answers to the amendments to the Indictments, specifying the crimes involved in the felony-murder contention advanced by the Commonwealth. Defendant contends it was error to permit the filing of that amended answer.

The rules envision amendments or

further answers to a bill of particulars. Pa. R. Crim. P. 221(b) provides in part: " . . .If the further particulars are desired after an original bill of particulars has been furnished, an application therefore may be made . . ."

The function of a bill of particulars is to enable the accused to prepare for trial and to prevent surprise. The allowance of the amendment to the indictment and the filing of the supplemental or amended answer to the bill of particulars in no way prejudiced the defendant at trial.

Defendant next asserts that the trial court erred in refusing to suppress defendant's statement.

The facts surrounding defendant's statement are as follows. Defendant was arrested at Chester County Hospital and taken to a State Police Barracks. A

state trooper called defendant's parents. They refused to come to the barracks. A trooper then went to their residence. Again they refused to accompany him to the barracks. That trooper then obtained a form of consent signed by both parents. Defendant was advised of this and after being given the so called Miranda warnings several times, defendant gave a written statement.

On these facts, we find that the statement was properly admitted and the Court did not error in admitting it. Cf. Commonwealth v. McCutchen, ____ Pa. ____, 343 A.2d 669 (1975) and cases cited therein.

The defendant next asserts that the Court erred in refusing additional voir dire of jurors as a result of a news broadcast.

At the conclusion of the proceedings on January 7, 1976 three prospective

jurors had been selected. The Court upon recessing for the day admonished the jurors as to their duties of avoiding external influences. The Court further advised them that in the event of inclement weather, any change in the court schedule would be broadcast over the radio. The following morning, a news broadcast concerning the trial contained the following:

"MR. SHAFFER: (Reading) A suppression of evidence motion has been denied and jury selection has begun in the case of Arnold Henderson, one of two Kennett teenagers charged with the strangulation murder of sixty-three year old Raymond Lowe of Kennett. Earlier this week, a severance was granted allowing Henderson and fifteen-year-old Jewel Roberts, also charged with the crime, to be tried separately. Henderson's trial will get under way as soon

as jury selection is complete and Miss Roberts is scheduled to be tried in about a month. The two teenagers are charged with robbing and tying Lowe to a bedpost in his Kennett home last summer. He was originally believed to have died while trying to free himself from the clothesline that bound him. However, a Philadelphia medical examiner has said that he believes Lowe may have been strangled before being tied. Jury selection will resume tomorrow if weather conditions permit."

The Court took under advisement the request of defense counsel to voir dire the three prospective jurors concerning that news broadcast.

At the conclusion of the jury selection proceedings, counsel indicated that the jurors selected were acceptable and thereupon they were administered their oath.

The Court permitted individual voir dire and specific questions proposed by counsel concerning publicity. We need not repeat what our appellate court has stated in Commonwealth v. Herron, ____ Pa. Superior Ct. ____, 365 A.2d 871 (1976) Suffice it to say that the single newscast was not substantial enough to require interrogation, was not a danger to a fair trial, and in fact the report was not so inherently prejudicial as to compel the conclusion that the trial court abused its discretion.

Defendant next asserts that the Court erred in its instructions to the jury with regard to murder of the second degree. The gist of the defendant's argument is that malice is a requisite element of that offense. The Crimes Code does not employ the use of the word malice, but rather in defining murder of the second degree refers to "criminal

homicide", a term defined in the Code to include the mental state of intention, knowledge, recklessness and negligence. The Court instructed the jury accordingly and we find no error.

Defendant finally asserts that the Court erred in failing to sustain a demurrer. The defendant contends that there was insufficient evidence upon which the jury could find an intentional killing. Defendant overlooks the fact that the inference of a specific intent. Further, similar arguments were advanced in the case of Commonwealth v. Ilgenfritz, ____ Pa. ____, 353 A.2d 387 (1976) and rejected by the Supreme Court of Pennsylvania.

Our test for passing on the sufficiency of the evidence is well-known:

> "'[T]he test of sufficiency of evidence is whether accepting as true all the evidence, together with all reasonable inferences therefrom upon which the jury

could properly have based its verdict, such evidence and inferences are sufficient in law to prove guilt beyond a reasonable doubt.'" Commonwealth v. Carbonetto, 455 Pa. 93, 95, 314 A.2d 304, 305 (1974). See also Commonwealth v. Green, ____ Pa. ____, 347 A.2d 682 (1975); Commonwealth v. Long, ____ Pa. ____, 333 A.2d 865 (1975); Commonwealth v. Clark, 454 Pa. 329, 311 A.2d 910 (1973); Commonwealth v. Oates, 448 Pa. 486, 295 A.2d 337 (1972). In addition, we are to consider the evidence in the light most favorable to the Commonwealth as the verdict winner. Commonwealth v. Green, supra; Commonwealth v. Rife, 454 Pa. 506, 509, 312 A.2d 406 (1973); Commonwealth v. Rankin, 441 Pa. 401, 404, 272 A.2d 886 (1971). Viewed with these requirements in mind, we have concluded that the evidence at trial was sufficient to sustain conviction.

O R D E R

AND NOW, , 1977

after argument and consideration of briefs of counsel, defendant's motions for a new trial and in arrest of judgment are denied. The Court Administrator is directed to list this matter for sentencing.

BY THE COURT:

/s/ John M. Wojcik
J.

CERTIFIED FROM THE RECORD

This 15th Day of February 1977

Attest Alfred C. Hayden

Deputy Clerk of Common Pleas Court